# IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CR No. 297 of 2001

Date of Decision: 10.8.2007

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Smt. Pushpa … Petitioner

Versus

Deep Singh Bakshi &Ors … Respondents.

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Coram:
**The Hon'ble Mr. Justice Deepak Gupta, Judge.**
***Whether approved for reporting?***

For the Petitioner : Mr. Bimal Gupta, Advocate

For the Respondent(s) : Mr. Mohan Singh, Advocate vice Mr. T.C.Sharma, Advocate.

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**Deepak Gupta, J.** (Oral).

This revision petition is directed against the order dated 19.6.2001 passed by the Rent Controller (II), Shimla in Rent Case No. 72-2 of 1995/93, whereby he has allowed the application filed by the respondent- landlord for bringing on record Smt. Pushpa widow of Sh Nand Kishore as his legal representative.

An eviction petition was filed by the respondent- landlord herein, against Sh Nand Kishore. Nand Kishore died on 5.10.1995. Thereafter the respondent-landlord moved an application that since Sh Nand Kishore has died, his widow Smt. Pushpa may be brought on record as the legal representative as she is the only legal representative of the deceased.

Reply to this application was filed by the tenant. One of the grounds taken was that the application was hopelessly time barred and that the main petition itself had abated. Though the factum of death of Nand Kishore was not denied, it was submitted that in

addition to Smt. Pushpa , Nand Kishore had left behind a son Atul Kumar and daughters, Meenakshi, Anita, Rita and Neelam and that the tenancy rights had devolved upon all the legal representatives.

Rejoinder was filed to application in which it was averred that as far as the married daughters are concerned, they were not residing with Nand Kishore and therefore, they have not inherited the tenancy. In respect of the son, it was submitted that even if it is found that he is the son of Nand Kishore, in that eventuality the respondent-landlord has no objection if he is impleaded as legal representative of the deceased.

The Rent Controller concerned disposed of this application in a very cryptic manner by passing the following order:-

"19.6.2001 Present: Sh T.C. Sharma, counsel for the petitioner.
Sh Arvind Negi, vice counsel for the respondent.

Application u/o 22 Rule 4 CPC is allowed in view of the submissions made therein as the application moved is within time. Let amended memo of parties be filed and notice be issued to L.Rs. for 8.8.2001.

Sd/- S. J. II,
Shimla."

This order shows total non-application of mind on the part of the Rent Controller. He in fact has purported to sign the order as Sub Judge, whereas he in fact was signing the same as Rent Controller. Secondly, he has allowed the application without considering the reply or the rejoinder filed by the parties.

As is clear from the facts mentioned above, the tenant had contested the application on the ground that it was time barred and also on the ground that Nand Kishore had left behind legal representatives other than Smt.Pushpa. These facts were not

considered by the Rent Controller at all. I am pained to note that a Judicial Officer could have passed such an order without even making reference to the pleadings of the parties. Every Judicial Officer is expected to pass a reasoned order giving the background of the case and should make reference to the pleadings of the parties. The application has been allowed by the Rent Controller without any application of mind. He has not considered the pleadings of the parties.

In view of the above discussion, the revision petition is allowed and the order dated 19.6.2001 is set aside. The Rent Controller is directed to pass fresh orders on the application filed for bringing on record the legal representatives of the tenant Sh Nand Kishore after taking into consideration the entire pleadings and the law on the subject.

With these observations, the petition is disposed of. The Registry is directed to send a copy of this order to the Rent Controller (II), Shimla forthwith. The petitioner is directed to appear before the Rent Controller (II) Shimla on 10th September, 2007. The Rent Controller shall ensure that notice is issued to the respondent-landlord and thereafter the petition under Order 22 rule is decided on or before 31st October, 2007 and the main rent petition itself is disposed of latest by 30th June, 2008.

August 10, 2007. ( Deepak Gupta ), J.

s.